IN THE

Supreme Court of the United States

No __, Original

STATE OF ALABAMA, STATE OF FLORIDA, STATE OF TENNESSEE, COMMONWEALTH OF VIRGINIA, AND THE SOUTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMMISSION,

Plaintiffs,

v

STATE OF NORTH CAROLINA,

Defendant

BILL OF COMPLAINT

1 The States of Alabama, Florida, and Tennessee, the Commonwealth of Virginia and the Southeast Interstate Low-Level Radioactive Waste Management Commission, by and through undersigned counsel and their respective Attorneys General, for their Complaint against the State of North Carolina allege as follows

PARTIES

2 The State of Alabama is a member of the Southeast Interstate Low-Level Radioactive Waste Management Compact The Compact was codified by the legislature of Alabama at Ala Code § 22-32-1 The filing of this Complaint has been authorized by Attorney General Bill Pryor pursuant to Ala Code § 36-15-12

3 The State of Florida is a member of the Southeast Interstate Low-Level Radioactive Waste Management

Compact The Compact was codified by the legislature of Florida at Fla Stat Ann § 404 30 The filing of this Complaint has been authorized by Attorney General Bob Butterworth

4 The State of Tennessee is a member of the Southeast Interstate Low-Level Radioactive Waste Management Compact The Compact was codified by the legislature of Florida at Tenn Code Ann § 68-202-701 The filing of this Complaint has been authorized by Attorney General Paul G Summers

5 The Commonwealth of Virginia is a member of the Southeast Interstate Low-Level Radioactive Waste Management Compact The Compact was codified by the legislature of Virginia at Va Code Ann § 10 1-1500 The filing of this Complaint has been authorized by Attorney General Jerry Kilgore

6 The Southeast Interstate Low-Level Radioactive Waste Management Commission (the "Commission" or the "Compact Commission") was created by statute to, among other things, administer the Southeast Interstate Low-Level Radioactive Waste Management Compact Pub L No 99-240, Tit II, 99 Stat 1859 (1986) (hereinafter cited as "Compact") By statute, the Commission was delegated the authority to "act or appear on behalf of any state or states before Congress, state legislatures, [and] any court of law" *Id.*, Art 4(E)(10), 99 Stat at 1875

7 The State of North Carolina has been a party to the Southeast Interstate Low-Level Radioactive Waste Management Compact The Compact was codified by the legislature of North Carolina at N C Gen Stat § 104F (repealed eff July 22, 1999)

JURISDICTION

8 This Court has exclusive original jurisdiction over this Complaint pursuant to Article III, Section 2, Clause 2 of the Constitution of the United States and 28 U S C § 1251(a)

SUMMARY

9 This action is brought by the States of Alabama, Florida, and Tennessee, the Commonwealth of Virginia and the Commission for violation of the member States' rights under the Compact, breach of contract, unjust enrichment, promissory estoppel and money had and received against the State of North Carolina North Carolina was a member of the Southeast Interstate Low-Level Radioactive Waste Management Compact and properly was designated as the next host State for the construction of a low-level radioactive waste disposal facility In order to ensure that North Carolina would locate an appropriate site and construct an adequate facility, the Commission provided nearly $80 million to North Carolina Over the course of more than ten years, North Carolina accepted the funds, conducted some preliminary search and analysis efforts to locate an appropriate site, but never even issued the necessary license for the project, let alone completed construction of the facility The other member States to the Compact were harmed not only by the fact that they found themselves without a site within their region at which to dispose of low-level radioactive waste, but also because close to $80 million of the Commission's funds were converted by North Carolina without North Carolina fulfilling its obligations undertaken pursuant to the Compact

FACTUAL BACKGROUND

10 The Southeast Interstate Low-Level Radioactive Waste Management Compact (the "Compact") was consented to by the United States Congress on January 15, 1986, as part of the Omnibus Low-Level Radioactive Waste Compact

Consent Act Pub L No 99-240, Tit II, 99 Stat 1859 (1986)

11 The original member States to the Compact were Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee and Virginia

12 The Compact was designed to provide "the instrument and framework for a cooperative effort" to provide sufficient facilities for the proper management of low-level radioactive waste generated in the region

13 To assist in the implementation of the Compact's objectives, the Compact, by its terms, created the Southeast Interstate Low-Level Radioactive Waste Management Commission (the "Commission"), consisting of two voting members from each member State

14 Among the Commission's duties was to identify a host State for the development of the second regional disposal facility The first regional disposal facility was the pre-existing facility located in Barnwell County, South Carolina Pub L No 101-171, sec 2, Art 7(H), 103 Stat 1289, 1289 (1989)

15 The Compact requires that each member State designated as a host State take appropriate steps to finance, site, license and construct the necessary disposal facility

16 The Compact expressly states that the Commission "is not responsible for any costs associated with (1) the creation of any facility" Compact, Art 4(K), 99 Stat at 1876

17 The Compact also vests in the Commission the power to impose sanctions upon member States that fail to comply with the provisions of the Compact or that fail to fulfill the obligations incurred by becoming a member State to the Compact Compact, Art 7(F), 99 Stat at 1879

THE PRESENT CONTROVERSY

18 In September 1986, following a lengthy screening and review process by the Commission and outside consultants, North Carolina was designated as the second host State

19 In August 1987, the North Carolina General Assembly formally acknowledged acceptance of this designation by creating and funding the siting authority for the project the North Carolina Low-Level Radioactive Waste Management Authority (the "North Carolina Authority") N C Gen Stat § 104G (repealed eff July 1, 2000) The facility North Carolina was to build was targeted to be completed by January 1, 1993

20 Although not obligated to do so, the Commission determined in 1988 that it was prudent for it to provide financial assistance to the designated host State – North Carolina – to assist with planning and administrative costs Accordingly, the Commission voted to appropriate $200,000 in its annual budget to a trust fund for that purpose In total, the Commission provided $1,200,000 to North Carolina through this fund

21 In December 1988, Governor Campbell of South Carolina notified the Commission that the Barnwell facility would cease to serve as the regional disposal facility on December 31, 1992

22 In 1989, at North Carolina's request, the Commission adopted a Capacity Assurance Charge on regional waste going to Barnwell to provide funds to "assure the timely development of the second regional disposal facility in North Carolina" by supporting the licensing phase of the project The Commission provided $19,733,816 to North Carolina through the collection of this Capacity Assurance Charge between January 1, 1990 and December 31, 1992

23 In July 1990, the North Carolina Authority notified the Commission that it would not meet the January 1, 1993

scheduled opening date for the facility Instead, completion of the project was estimated to take an additional two years and cost close to twice as much to complete

24 To assist with these alleged increased costs, the Commission established an Access Fee on regional waste going to the Barnwell facility The Commission provided $12,012,795 to North Carolina through collection of these fees

25 In October 1991, the North Carolina Authority notified the Commission that it would not meet its revised target date for opening the facility Instead, the site was scheduled to open in February 1996

26 In June 1992, at the request of the Commission, which was prompted by delays with the North Carolina facility, the South Carolina legislature voted to allow the Barnwell facility to remain open as the regional disposal site until January 1, 1996

27 In September 1992, the Commission adopted an Out-of-Region Access Fee on out-of-region waste going to the Barnwell facility during the January 1, 1993 through June 30, 1994 period A total of $23,459,786 was provided to North Carolina through the collection of these fees

28 In November 1992, at North Carolina's request, the Commission agreed to levy $3,000,000 per quarter in access fees on southeast waste generators for the period January 1, 1993 through December 31, 1995 A total of $23,405,699 of this fee was provided to North Carolina

29 In April 1994, the Commission granted North Carolina's request for the advancement of funds from the Regional Access Fee fund "when necessary on a documentated [sic] basis not to exceed a total of $3 Million" See Apr 29, 1994 Commission Minutes at 6 (App H 68a)

30 Also in April 1994, the Commission approved the transfer of up to $7 million in additional funds to North Carolina on an as-needed basis

31 In August 1994, the North Carolina Division of Radiation Protection, the State entity responsible for issuing the license for the disposal facility, announced there would be a 15-month delay in the licensing process, further postponing the scheduled opening of the facility until at least June 1997

32 In December 1994, the North Carolina Authority approved an additional one-year delay, postponing the scheduled opening until June 1998

33 In May 1995, the Commission met twice to consider a South Carolina proposal intended to punish North Carolina for its lack of progress and to create a sense of urgency to open the disposal facility The proposal would have denied access to Barnwell for North Carolina's waste until North Carolina issued a license for the new facility The proposal was voted upon twice, and each time failed by a single vote

34 In July 1995, South Carolina withdrew from the Compact

35 South Carolina's withdrawal from the Compact eliminated the Commission's principal source of revenue to fund its operations as well as site development activities – the levying of fees and surcharges on waste disposed of at the Barnwell facility The Commission's only remaining source of funding was interest on its accrued funds

36 Because the Commission no longer had a revenue stream from which to provide funding assistance to North Carolina and because the projected expenses to complete the project exceeded the Commission's remaining funds, the Commission notified North Carolina in January 1996 that North Carolina should consider alternative funding opportunities for completing the project

37 In June 1996, Governor James B Hunt, Jr of North Carolina informed the Commission that North Carolina would not fulfill its existing commitment to pay the project costs Governor Hunt attempted to put the burden on the Commission, contrary to the clear language of the Compact, to fund the project

38 In June 1996, the North Carolina Authority adopted a Licensing Work Plan under which the facility would not open until at least 2001

39 In October 1996, in a good faith effort to move the North Carolina project along, the Commission authorized the release of funds to North Carolina on a quarterly basis, subject to North Carolina's compliance with certain conditions To implement this plan, the Commission authorized providing a total of $6 5 million to North Carolina to restart and move forward with the project, which had been closed down by the North Carolina Authority in July 1996, allegedly due to a lack of funds

40 In April 1997, the Commission voted to release an additional $2 9 million to North Carolina

41 Also in 1997, the Commission approved North Carolina's request for up to $1 4 million for the months of August and September

42 In August 1997, the Commission voted to provide interim stop-gap funding to North Carolina up to $1 2 million

43 In 1997, because other attempts to resolve the funding problem had failed, the Commission organized a Task Force for Facility Funding (the "Task Force") to study the funding issue and recommend funding alternatives The Task Force included volunteer representatives of the North Carolina Authority, the Commission, waste generators and the public

44 In August 1997, the Commission submitted to Governor Hunt a proposed Memorandum of Understanding that had been drafted by waste generators based upon the

recommendations of the Task Force The proposal called for the Commission and volunteer generators to fund the remainder of the licensing costs The Commission asked the North Carolina Authority either to approve the proposal or to propose any other method of funding by December 1, 1997, or the Commission would cease providing funding to North Carolina

45 By December 1, 1997, North Carolina had neither endorsed the proposal nor proposed an alternative funding plan Instead, on or about December 19, 1996, the Chairman of the North Carolina Authority notified the Commission of the Authority's decision to begin shutting down the project pending instructions from the North Carolina Legislature or the Commission's reversal of its position regarding funding

46 In January 1998, the Commission notified the North Carolina Authority that the shut down constituted a breach of the Compact by North Carolina

47 Between January 1998 and April 1999, the Commission engaged in formal mediation with the State of North Carolina in an attempt to resolve matters, but no resolution was reached

48 In April 1999, the Commission again notified North Carolina that it was in breach of the Compact and requested that North Carolina provide a written plan and schedule for North Carolina to bring itself into compliance with the Compact and to provide a disposal facility for the region North Carolina did nothing

49 In June 1999, the States of Florida and Tennessee filed a Sanctions Complaint against North Carolina with the Commission The Sanctions Complaint alleged that North Carolina had failed to fulfill its obligations as a member State and as the designated host State by not providing a disposal facility for the region The Sanctions Complaint sought, among other things, the disgorgement of the $79,930,337 that the Commission had provided to North Carolina to assist in

the licensing and development of the disposal facility, plus interest from the date North Carolina ceased activity to develop the requisite facility, January 1, 1998

50 In July 1999, North Carolina purported to withdraw from the Compact, pursuant to Article 7(G)

51 In August 1999, the Commission approved the recommendation of the Sanctions Committee to initiate a formal inquiry into the complaint filed against North Carolina

52 On November 8, 1999, the Commission formally notified North Carolina of the Sanctions Hearing to be held on December 8, 1999

53 On December 1, 1999, the Attorney General of North Carolina, Michael F Easley, informed the Commission that North Carolina would not participate in the Sanctions Hearing, taking the position that having withdrawn from the Compact, North Carolina no longer was subject to the jurisdiction of the Commission North Carolina effectively waived its rights under the Compact

54 The Commission held a Sanctions Hearing on December 8, 1999 The Commission heard testimony and received evidence from all interested parties, except for North Carolina, which persisted in its refusal to participate in the process and thus knowingly waived its rights

55 On December 9, 1999, by a unanimous vote, the Commission found that North Carolina had failed to fulfill its obligations under the Compact and voted to require North Carolina to repay the $79,930,337 in funds it had received from the Commission, plus interest from the date North Carolina ceased activities to develop the requisite facility, January 1, 1998 The Commission also voted to require North Carolina to pay $10 million in sanctions, as compensation for the loss of a source of funds for the Commission's operating budget for 20 years, and attorneys'

fees North Carolina was given until July 10, 2000 to comply with this order

56 The July 10, 2000 deadline passed North Carolina neither repaid the funds nor gave the Commission any indication of its intent to do so

57 On July 10, 2000 the Commission moved this Court for leave to file a Bill of Complaint against North Carolina

58 On September 11, 2000, North Carolina filed its Opposition to the Commission's motion

59 In October 2000, the Court sought, and in May 2001 received, the view of the Solicitor General on the Commission's motion The Acting Solicitor General took the position that the Commission was not a State and that it was unclear whether Congress could properly authorize a Compact-created entity to invoke this Court's original jurisdiction on behalf of the Compact's member States The brief for the United States did expressly indicate that an action brought by any of the States to enforce the Compact would be an appropriate case for this Court to exercise its exclusive original jurisdiction

60 In June 2001, this Court denied the Commission's Motion for Leave to File a Bill of Complaint

61 North Carolina's actions and failures to act violate North Carolina's obligations under the Compact and otherwise create common law rights for return of the monies paid to North Carolina

COUNT I – VIOLATION OF MEMBER STATES' RIGHTS UNDER THE COMPACT

62 Plaintiffs hereby reallege Paragraphs 1 through 59 as if fully set forth herein

63 As alleged, the Compact is an agreement among the States that has the force of federal law The Compact

imposes an express statutory obligation on the member States to fulfill their obligations to fund, construct and operate a regional disposal facility when such State is designated as the host State

64 North Carolina was designated as the host State, but failed to fund, license, construct or operate a regional disposal facility North Carolina's actions constitute a violation of the member States' rights under the Compact

65 As a result of North Carolina's violation of its obligations under the Compact, Plaintiffs have suffered and will suffer significant monetary damages, including the loss of $79,930,337 paid to North Carolina in furtherance of the project, the loss of a regional disposal facility and the loss of a source of funds for the Commission's operating budget

COUNT II - BREACH OF CONTRACT

66 Plaintiffs hereby reallege Paragraphs 1 through 63 as if fully set forth herein

67 As alleged, the Compact is a federal law and is a legally binding and enforceable contract

68 Under the contract, North Carolina was obligated, as the designated second host State, to site, license, construct and operate a regional low-level radioactive waste disposal facility

69 The allegations contained hereinbefore constitute breaches of said contract by North Carolina

70 As a direct result of these breaches, Plaintiffs have suffered and will suffer substantial monetary damages, including the loss of $79,930,337 paid to North Carolina in furtherance of the project, the loss of a regional disposal facility and the loss of a source of funds for the Commission's operating budget

COUNT III – UNJUST ENRICHMENT

71 Plaintiffs hereby reallege Paragraphs 1 through 68 as if fully set forth herein

72 North Carolina received close to $80 million from the Commission to be used for the licensing and development of the next regional disposal facility

73 North Carolina acknowledged the funds received from the Commission, and even repeatedly demanded that the Commission provide additional funds

74 North Carolina has retained the nearly $80 million it received from the Commission, despite the fact that North Carolina failed to deliver the regional disposal facility it was obligated as the next host State to provide

75 As a result, North Carolina has been unjustly enriched in an amount equal to $79,930,337 and should be ordered to pay this amount in restitution to Plaintiffs

COUNT IV – PROMISSORY ESTOPPEL

76 Plaintiffs hereby reallege Paragraphs 1 through 73 as if fully set forth herein

77 As alleged, North Carolina accepted the designation of host State and through its governors repeatedly confirmed that it would provide a facility, thereby promising the other member States that it would construct and operate a regional disposal facility in North Carolina

78 Plaintiffs reasonably and foreseeably relied upon North Carolina's promise to construct and operate a regional disposal facility

79 North Carolina unjustifiably failed to construct and operate a regional disposal facility

80 Plaintiffs have suffered and will suffer significant harm as a result of their reliance on North Carolina's promise,

including the loss of $79,930,337 paid to North Carolina in furtherance of the project, the loss of a regional disposal facility and the loss of a source of funds for the Commission's operating budget

COUNT V – MONEY HAD AND RECEIVED

81 Plaintiffs hereby reallege Paragraphs 1 through 78 as if fully set forth herein

82 As alleged, North Carolina has received $79,930,337 from the Commission

83 These funds were intended to further the completion of the construction of a regional disposal facility in North Carolina

84 The regional disposal facility in North Carolina never was constructed

85 North Carolina has retained the $79,930,337 from the Commission, in exchange for which the Commission has received nothing

86 North Carolina, in equity and good conscience, should pay over to the Commission $79,930,337

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court

1 Declare that North Carolina is subject to the jurisdiction of the Commission and subject to the Commission's sanctions decisions, despite North Carolina's purported attempt to withdraw from the Compact on July 26, 1999

2 Declare that the Sanctions Hearing conducted by the Commission was fair and valid

3 Declare that the sanctions against North Carolina imposed by the Commission upon receipt of all evidence in

the Sanctions Hearing were fair and reasonable and are subject to enforcement

4 Award Plaintiffs such damages, costs and further relief as this Court deems just and proper

Respectfully submitted,

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